

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MURAD HAAMID,)	No. EDCV 10-0710-RC
)	
Plaintiff,)	
)	OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Murad Haamid filed a complaint on May 18, 2010, seeking review of the Commissioner's decision denying his application for disability benefits. On October 1, 2010, the Commissioner filed an answer to the complaint, and the parties filed a joint stipulation on November 16, 2010.

BACKGROUND

On July 28, 2008, plaintiff, who was born on December 14, 1950, applied for disability benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. § 423, claiming an inability to work since January 1, 2008, due to anxiety, hepatitis C and degenerative disc

disease.¹ A.R. 74-76, 104. The plaintiff's application was initially denied on September 26, 2008, and was denied again on November 7, 2008, following reconsideration. A.R. 40-50. The plaintiff then requested an administrative hearing, which was held before Administrative Law Judge Sharilyn Hopson ("the ALJ") on December 17, 2009. A.R. 16-37, 52. On January 22, 2010, the ALJ issued a decision finding plaintiff is not disabled. A.R. 6-15. The plaintiff appealed this decision to the Appeals Council, which denied review on March 24, 2010. A.R. 1-5.

DISCUSSION

I

The Court, pursuant to 42 U.S.C. § 405(g), has the authority to review the decision denying plaintiff disability benefits to determine if his findings are supported by substantial evidence and whether the Commissioner used the proper legal standards in reaching his decision. Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009); Vernoff v. Astrue, 568 F.3d 1102, 1105 (9th Cir. 2009). "In determining whether the Commissioner's findings are supported by substantial evidence, [this Court] must review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715, 720 (9th Cir. 1998); Holohan v. Massanari, 246 F.3d 1195, 1201 (9th Cir. 2001). "Where the evidence can reasonably support either affirming or reversing the decision, [this Court] may not

¹ The plaintiff also applied for benefits under the Supplemental Security Income program of Title XVI of the Act, A.R. 70-73, but the matter proceeded as a Title II case.

1 substitute [its] judgment for that of the Commissioner." Parra v.
2 Astrue, 481 F.3d 742, 746 (9th Cir. 2007), cert. denied, 552 U.S. 1141
3 (2008); Vasquez, 572 F.3d at 591.

4
5 The claimant is "disabled" for the purpose of receiving benefits
6 under the Act if he is unable to engage in any substantial gainful
7 activity due to an impairment which has lasted, or is expected to
8 last, for a continuous period of at least twelve months. 42 U.S.C. §
9 423(d)(1)(A); 20 C.F.R. § 404.1505(a). "The claimant bears the burden
10 of establishing a prima facie case of disability." Roberts v.
11 Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122
12 (1996); Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996).

13
14 The Commissioner has promulgated regulations establishing a five-
15 step sequential evaluation process for the ALJ to follow in a
16 disability case. 20 C.F.R. § 404.1520. In the **First Step**, the ALJ
17 must determine whether the claimant is currently engaged in
18 substantial gainful activity. 20 C.F.R. § 404.1520(b). If not, in
19 the **Second Step**, the ALJ must determine whether the claimant has a
20 severe impairment or combination of impairments significantly limiting
21 him from performing basic work activities. 20 C.F.R. § 404.1520(c).
22 If so, in the **Third Step**, the ALJ must determine whether the claimant
23 has an impairment or combination of impairments that meets or equals
24 the requirements of the Listing of Impairments ("Listing"), 20 C.F.R.
25 § 404, Subpart P, App. 1. 20 C.F.R. § 404.1520(d). If not, in the
26 **Fourth Step**, the ALJ must determine whether the claimant has
27 sufficient residual functional capacity despite the impairment or
28 various limitations to perform his past work. 20 C.F.R.

1 § 404.1520(f). If not, in **Step Five**, the burden shifts to the
2 Commissioner to show the claimant can perform other work that exists
3 in significant numbers in the national economy. 20 C.F.R. §
4 404.1520(g).

5
6 Applying the five-step sequential evaluation process, the ALJ
7 found plaintiff has not engaged in substantial gainful activity since
8 January 1, 2008, his alleged onset date. (Step One). The ALJ then
9 found plaintiff has the following severe impairments: "degenerative
10 disc disease of the lumbar spine and hepatitis C" (Step Two); however,
11 plaintiff does not have an impairment or combination of impairments
12 that meets or equals a listed impairment. (Step Three). Finally, the
13 ALJ determined plaintiff is able to perform his past relevant work as
14 a warehouse worker, bus driver, and housekeeper; therefore, he is not
15 disabled. (Step Four).

16 17 II

18 A claimant's residual functional capacity ("RFC") is what he can
19 still do despite his physical, mental, nonexertional and other
20 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);
21 see also Valentine v. Comm'r, Soc. Sec. Admin., 574 F.3d 685, 689 (9th
22 Cir. 2009) (RFC is "a summary of what the claimant is capable of doing
23 (for example, how much weight he can lift)."). Here, the ALJ found
24 plaintiff has the RFC to perform the full range of medium work.² A.R.

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26
27 ² Under Social Security regulations, "[m]edium work
28 involves lifting no more than 50 pounds at a time with frequent
lifting or carrying of objects weighing up to 25 pounds." 20
C.F.R. § 404.1567(c).

12. However, the plaintiff contends the ALJ's decision is not supported by substantial evidence because the ALJ erroneously rejected the opinions of John Byrne, D.O., plaintiff's treating physician,³ and failed to properly consider a statement by Vandellian Pearson, plaintiff's wife.

A. Treating Physician's Opinion:

Since at least 2001, plaintiff has received medical treatment at the Loma Linda Veterans' Administration Medical Center ("VA") for a variety of conditions, including allergies, hepatitis C, alcohol abuse, hypercholesterolemia, ankle and foot pain, degenerative disc disease and anxiety. A.R. 143-93, 229-78, 292. On May 18, 2005, plaintiff underwent a lumbar spine MRI, which showed a narrowed disc space, sclerosis and spurring at L4-L5 and unspecified degenerative joint disease of the spine with narrowing and 2-3 cm. disc bulging. A.R. 144, 173. On December 2, 2009, Dr. Byrne, a VA physician, opined that plaintiff suffers several medical conditions, including hepatitis C, dyslipidemia, degenerative disc disease, anxiety and colonic polyps, and Dr. Byrne further opined that "is unemployable." A.R. 292.

The medical opinions of treating physicians are entitled to special weight. Reddick, 157 F.3d at 725; Embrey v. Bowen, 849 F.2d

³ Although plaintiff describes Dr. Byrne as a treating physician, see Jt. Stip. at 3:7-8, he cites no evidence in the record showing Dr. Byrne ever treated plaintiff. See A.R. 143-93, 229-78, 292. Nevertheless, the Court will assume Dr. Byrne is plaintiff's treating physician for purposes of this opinion. See A.R. 143, 229 (identifying Dr. Byrne as "PCMM Provider").

1 418, 421 (9th Cir. 1988). This is because the treating physician "is
2 employed to cure and has a greater opportunity to know and observe the
3 patient as an individual." Sprague v. Bowen, 812 F.2d 1226, 1230 (9th
4 Cir. 1987); Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595,
5 600 (9th Cir. 1999). Therefore, the ALJ must provide clear and
6 convincing reasons for rejecting the uncontroverted opinion of a
7 treating physician, Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198
8 (9th Cir. 2008); Reddick, 157 F.3d at 725, and "[e]ven if [a] treating
9 doctor's opinion is contradicted by another doctor, the ALJ may not
10 reject this opinion without providing 'specific and legitimate
11 reasons' supported by substantial evidence in the record." Reddick,
12 157 F.3d at 725; Valentine, 574 F.3d at 692.

13
14 Here, the ALJ gave Dr. Byrne's opinion no weight because Dr.
15 Byrne "simply lists the [plaintiff's] medical impairments with no
16 explanation of how he arrived at his opinion" and "his opinion [is]
17 unsupported." A.R. 14. This is a specific and legitimate reason for
18 rejecting Dr. Byrne's opinion since "[t]he mere diagnosis of an
19 impairment . . . is not sufficient to sustain a finding of
20 disability[,]" Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990);
21 see also Matthews v. Shalala, 10 F.3d 678, 680 (9th Cir. 1993) ("The
22 mere existence of an impairment is insufficient proof of a
23 disability."); Higgs v. Bowen, 880 F.2d 860, 863 (6th Cir. 1988) (per
24 curiam) ("The mere diagnosis of [an ailment] . . . says nothing about
25 the severity of the condition."), and "[t]he ALJ need not accept the
26 opinion of any physician, including a treating physician, if that
27 opinion is brief, conclusory, and inadequately supported by clinical
28 findings." Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002);

1 Batson v. Comm'r of the Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th
2 Cir. 2004).

3
4 The ALJ also rejected Dr. Byrne's opinions because they were
5 inconsistent with the opinions of examining physicians William C.
6 Boeck, Jr., M.D.,⁴ an orthopedic surgeon, and Romualdo R. Rodriguez,
7 M.D.,⁵ a psychiatrist, and nonexamining physicians G. Spellman, M.D.,⁶
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9
10 ⁴ Dr. Boeck examined plaintiff on September 16, 2008, and
11 opined plaintiff can lift and carry 50 pounds occasionally and 25
12 pounds frequently, can stand and walk for 6 hours in an 8-hour
day, and can sit for 6 hours in an 8-hour day. A.R. 216-20.

13 ⁵ Dr. Rodriguez examined plaintiff on September 7, 2008,
14 diagnosed plaintiff as having a major depressive disorder and
15 alcohol dependence in early full remission, determined
16 plaintiff's Global Assessment of Functioning ("GAF") was 65 (A
17 GAF of 61-70 indicates "[s]ome mild symptoms (e.g., depressed
18 mood and mild insomnia) or some difficulty in social,
19 occupational, or school functioning (e.g., occasional truancy, or
20 theft within the household), but generally functioning pretty
21 well, has some meaningful interpersonal relationships." American
22 Psychiatric Association, Diagnostic and Statistical Manual of
23 Mental Disorders, 34 (4th ed. (Text Revision) 2000)), and opined
24 plaintiff is minimally limited in his ability to: relate and
25 interact with supervisors, coworkers and the public; maintain
concentration, attention, persistence and pace; associate with
day-to-day work activity, including attendance and safety; adapt
to the stresses common to a normal work environment; maintain
regular attendance in the work place and perform work activities
on a consistent basis; and perform work activities without
special or additional supervision; but he can understand,
remember and carry out simple as well as detailed and complex
instructions. A.R. 194-200.

26 ⁶ On September 24, 2008, Dr. Spellman opined plaintiff can
27 lift and carry 50 pounds occasionally and 25 pounds frequently,
28 can sit for about 6 hours in an 8-hour day, can frequently climb
ramps and stairs, balance, stoop, kneel, crouch and crawl, and
can never climb ladders, ropes and scaffolds. A.R. 223-27.

1 and K. Loomis, M.D.,⁷ -- all of whom concluded plaintiff is not
 2 disabled. A.R. 14, 194-200, 202-12, 216-20, 223-27. "The contrary
 3 opinions of [the examining and nonexamining physicians] serve as . . .
 4 specific and legitimate reasons for rejecting the opinions of [the
 5 claimant's treating physician], and provide assurance that the record
 6 was sufficiently developed with regard to the issue of [plaintiff's]
 7 impairment." Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir.
 8 2001); Batson, 359 F.3d at 1195.

9
 10 Nevertheless, plaintiff contends the ALJ had a duty to contact
 11 Dr. Byrne to obtain further explanation from him to support his
 12 opinions. Jt. Stip. at 5:28-8:18. Although "the ALJ has a special
 13 duty to fully and fairly develop the record and to assure that the
 14 claimant's interests are considered[,]" Smolen, 80 F.3d at 1288
 15 (citation omitted); Widmark v. Barnhart, 454 F.3d 1063, 1068 (9th Cir.
 16 2006), here "[t]he record before the ALJ was neither ambiguous nor
 17 inadequate to allow for proper evaluation of the evidence." Mayes,
 18 276 F.3d at 460; see also Tonapetyan, 242 F.3d at 1150 ("Ambiguous
 19 evidence, or the ALJ's own finding that the record is inadequate to
 20 allow for proper evaluation of the evidence, triggers the ALJ's duty
 21 to 'conduct an appropriate inquiry.'"). Therefore, the ALJ did not
 22 fail to properly develop the medical record. Tonapetyan, 242 F.3d at
 23 1149; see also Wright v. Astrue, 2009 WL 2849006, *7 (C.D. Cal.) ("The
 24 ALJ found that [the physician's] report was conclusory and

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 26 ⁷ Dr. Loomis opined plaintiff's mental impairment is not
 27 severe and he has no restrictions in his activities of daily
 28 living, mild difficulties maintaining social functioning and
 concentration, persistence or pace, and has not experienced any
 episodes of decompensation. A.R. 202-12.

1 unsupported, not ambiguous or inadequate to allow for a proper
2 evaluation. Nor did any physician render an opinion that the record
3 was ambiguous or inadequate. Based on the record, the ALJ had no duty
4 to develop the record further." (citation omitted)).

5
6 **B. Lay Witness Statement:**

7 "Lay testimony as to a claimant's symptoms is competent evidence
8 that an ALJ must take into account, unless he or she expressly
9 determines to disregard such testimony and gives reasons germane to
10 each witness for doing so." Lewis v. Apfel, 236 F.3d 503, 511 (9th
11 Cir. 2001); Valentine, 574 F.3d at 694. Thus, a third party's
12 statement is competent evidence, and "an important source of
13 information about a claimant's impairments[.]" Regennitter v. Comm'r
14 of the Soc. Sec. Admin., 166 F.3d 1294, 1298 (9th Cir. 1999);
15 Schneider v. Comm'r of the Soc. Sec. Admin., 223 F.3d 968, 975 (9th
16 Cir. 2000).

17
18 Here, plaintiff's wife, Vandellian Pearson, on August 14, 2008,
19 stated plaintiff is not very active anymore and he spends his day
20 resting and taking pain medication. A.R. 91-98. Ms. Pearson also
21 noted plaintiff has stiffness in his body each morning and needs help
22 washing his back and combing his hair. A.R. 92. Ms. Pearson stated
23 plaintiff's condition affects his ability to lift, squat, bend, stand,
24 reach, walk, sit, kneel, climb stairs, complete tasks and concentrate,
25 but did not explain how these abilities are affected. A.R. 96.
26 However, in responding to a question about how plaintiff's illness
27 affects his abilities, Ms. Pearson simply responded "[n]ot very far."
28 Id. Further, Ms. Pearson indicated plaintiff can drive, handle money,

1 pay attention for "a good amount of time," follow spoken instructions
2 reasonably well, has no problem getting along with family, friends, or
3 others, gets along with authority figures very well, and can handle
4 changes in routine "sort of good[,]" but is not that good with written
5 instructions and at handling stress. A.R. 94-97.

6
7 The ALJ did not specifically address Ms. Pearson's statement,
8 A.R. 13, and this was clear legal error, Stout v. Comm'r, Soc. Sec.
9 Admin., 454 F.3d 1050, 1054 (9th Cir. 2006); Schneider, 223 F.3d at
10 975, as the Commissioner acknowledges. Jt. Stip. at 16:4-5. However,
11 the ALJ's error was harmless since nothing in Ms. Pearson's statement
12 is necessarily inconsistent with the ALJ's RFC determination or
13 demonstrates plaintiff is disabled. Lockwood v. Comm's Soc. Sec.
14 Admin., __ Fed. Appx. __, 2010 WL 3258572, *2 (9th Cir. (Or.)); Hart v.
15 Astrue, 349 Fed. Appx. 175, 177 (9th Cir. 2009); Sabin v. Astrue, 337
16 Fed. Appx. 617, 621 (9th Cir. 2009). Since "[t]he court will not
17 reverse an ALJ's decision for harmless error, which exists when it is
18 clear from the record that the ALJ's error was inconsequential to the
19 ultimate nondisability determination[,]" Tommasetti v. Astrue, 533
20 F.3d 1035, 1038 (9th Cir. 2008) (citations and internal quotation
21 marks omitted); Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005),
22 there is no merit to plaintiff's claim that the ALJ's error requires
23 reversal.

24
25 **ORDER**

26 IT IS ORDERED that: (1) plaintiff's request for relief is denied;

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1 and (2) the Commissioner's decision is affirmed, and Judgment shall be
2 entered in favor of defendant.

3
4 DATE: November 22, 2010

/S/ ROSALYN M. CHAPMAN
ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE

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